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NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

RICHARD E. WILLIAMS, ... Petitioner

versus

SECRETARY OF HEALTH, EDUCATION & WELFARE, ... Respondent

On Writ of Certiorari to the Unites States Court of Appeals for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Has the petitioner's rights under the 5th Amendment to the United States Constitution been violated?

2. Has the petitioner's rights under the 9th Amendment to the United States Constitution been violated?

Petitioner submits that the answer to both these questions is "Yes".

LIST OF PARTIES

All parties to this case are listed where the caption of the case appears on the front cover of this petition.

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REPORT OF OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit is unreported. It is reproduced as Appendix A. The opinion of denial of petitioner's petition for rehearing and suggestion for rehearing en banc is reproduced as Appendix B. Both Appendix A and Appendix B are a part of this petition and are presented, for the Court's convenience, in a separately bound volume marked Petitioner's Appendix To Petition For A Writ of Certiorari.

STATEMENT OF JURISDICTION

On December 29, 1983 the Court of Appeals entered judgment affirming the denial of petitioner's application for disability insurance benefits. Petitioner timely petitioned for rehearing which was denied on February 27, 1984. The jurisdiction of this Court is invoked under Title 42 United States Code 405(g).

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The pertinent parts of the constitutional, statutory and regulatory provisions involved in this case are reproduced in the Appendix to this Petition, in the separately bound volume marked Petitioner's Appendix To Petition For A Writ of Certiorari, as follows:

(1) Appendix V: Constitutional
(2) Appendix W: Statutory/Code of Federal Regulations
(3) Appendix X: Regulatory

STATEMENT OF FACTS

In 1977, the petitioner filed a claim for disability insurance benefits. In 1979, after two purported respondent agency hearings before so-called Administrative Law Judges, the petitioner filed suit against the respondent, Secretary of Health, Education & Welfare, through his wife and duly authorized lay representative, Lynn C. Williams, who prepared the complaint and entered same in his behalf, at the United States District Court of Connecticut at New Haven, Connecticut, docket number N-79-338. In 1981, petitioner, again, through his lay representative, caused a Motion To Restore To Active Docket to be filed in said Court after a third purported respondent agency hearing before a third so-called Administrative Law Judge, hereinafter referred to as ALJ, alleging, inter alia, inaccurate/erroneous factual findings upon the face of the third ALJ's recommended decision to resolve crucial issues (See Appendix Y(i)), administrative procedural deficiencies and constitutional due process violations -which was granted by said District Court.

In 1983, said Court erroneously applied a limited review standard and wholly failed to consider the merits of petitioner's aforestated allegations although the Court was provided with clear unequivocal truthful facts, substantiated by documentation proving petitioner's aforestated allegations. Petitioner appealed to the United States Court of Appeals for the Second Circuit, docket number 83-6139. That Court held there was substantial evidence that supported the respondent's decision.

Further, the actions of petitioner's, then, attorney was binding on petitioner, in particular, that counsel withdrew the request for the ALJ's disqualification and agreed to the use of interrogatories, rather than insisting on subpoenaing certain witnesses and that petitioner was not entitled to have a second representative since petitioner had signed an authorization to have a lawyer represent him at the hearing. Moreover, that Court reached the remarkable conclusions that: (1) petitioner's allegations of improper ex-parte actions by the ALJ were utterly without merit and (2) there was no merit to the argument that the District Court violated petitioner's due process rights-despite overwhelming evidence on the face of the

administrative record and attached to the pleadings to the District Court and to the brief filed in the Court of Appeals to the contrary. This petition was filed from the denial of rehearing by the Second Circuit.

REASONS FOR GRANTING THE WRIT

Where petitioner presented clear, unequivocal, truthful facts which irrefutably attested the blatant denial of minimum procedural due process hearing requirement rights, deprivation of constitutional rights and inaccurate/erroneous factual findings to resolve the crucial issue of petitioner's medical management upon the face of the ALJ's recommended decision, including the ALJ's failure to properly consider the crucial adversary physician's (Dr. Poverman's) interrogatory responses, under oath, in the evidentiary record, due process demanded the Appeals Court - not only consider the irrefutable evidence in petitioner's record but - consider the affidavits presented to said Court by petitioner's lay representative, former attorney and the petitioner.

The Court of Appeals' proposition that the attorney's failure to proceed on the disqualification issue and upon insisting on subpoenaing certain witnesses was binding on petitioner is untenable based on the affidavits presented to the Court and, in particular, the attorney's affidavit (See Appendix Y(2)). Further, such proposition advanced by the Second Circuit is incompatible with the proposition advanced by said Court in *Decker* v. *Harris*, 647, F.2d 291 (2nd. Cir. 1981) which held - it clear that the duty to inquire into additional impairments a claimant may suffer from is not obviated by the presence of counsel. Moreover, in the following cases benefits have been awarded or remands ordered when - the Secretary did not insure the actions of the Social Security Act were fair and thorough, even though a claimant was represented by counsel:

Kelley v. *Weinberger*, 391 F. Supp. 1337 (D.C. Inc. 1974)
Garrett v. *Richardson*, 363 F. Supp. 83 (D.C.S.C. 1973)
Tillman v. *Weinberger*, 398 F. Supp. 1124 (N.D. Ind. 1975)
Rayborn v. *Weinberger*, 398 F. Supp. 1303 (N.D. Ind. 1975)
Palik v. *Mathews*, 422 F. Supp. 547 (D. Neb. 1976).

Clearly, the attorney had no reasonable ground to challenge the integrity of the ALJ and properly refrained from doing so on the date of petitioner's second re-hearing in reliance of the ALJ's expressed representations and his position of public trust rather than rely on petitioner's lay representative's bare assertions and accusations of malfeasance committed by the ALJ. (See Appendices Y(1) and Y(2)).

Unfortunately, to the petitioner's prejudice and peril, some months after the hearing, irrefutable evidence patently demonstrated malfeasance committed by the ALJ documenting the said ALJ had acted in violation of 20 §404.1546 of the Code of Federal Regulations, Title 5 U.S.C. §554(d) (1), §554(d) (2) and §557(d) (1) (C) (i) (ii) and (iii) of the Statutes, Social Security Regulations §404.922, §404.926, §404.927, §404.980 and §404.983, Amendments V and IX of the United States Constitution in addition to ethical violations of Canons 2A, 2B and 3A(4) of the Code of Judicial Conduct. Thus, the Court of Appeals' procedure in intentionally overlooking the ALJ's acts of malfeasance in wilful disregard of the petitioner's rights and attempting to make the petitioner's former counsel the "fall guy" and scapegoat was utterly outrageous and shockingly unconscionable.

Ironically, the Second Circuit further remarkably ascribed petitioner's medical management, solely and exclusively, to his primary treating physician, Dr. DePonte, despite overwhelming record evidence petitioner during the past three years was concurrently treating with other physicians, including Drs. Seery, Nezlo and Toole, by accepting the ALJ's contrived explanation, as plausible, contained in his recommended decision that "It is not necessary for the undersigned [ALJ] to reconcile every conflicting shred of medical evidence...".Thus, the recommended decision recognized the existence of petitioner's concurrent treating physicians but fails to accord such physicians' any weight nor credibility determinations while the District Court and the Court of Appeals have wholly failed to recognize the existence of petitioner's aforestated concurrent treating physicians. Accordingly, it is axiomatic that the respondent agency, the Connecticut District Court and the Second Circuit Court of Appeals have acted in serious and extreme

conflict herein in that the crucial issue of weight/recognition of treating physicians is well established in the Second Circuit and well settled in other circuits, in that the established law is precisely - it is error for the Secretary to ignore, or to fail to consider evidence by treating physicians. *See, e.g.,*

Alvarado v. *Califano*, 605 F. 2d 34 (2nd Cir. 1979)
Aubeuf v. *Schweiker*, 649 F. 2d 107, 112 (2nd Cir. 1981)
Boyd v. *Heckler*, 704 F. 2d 1207, 1211 (11th Cir. 1983)
Denton v. *Weinberger*, 412 F. Supp. 450, 453 (S.D.N.Y. 1972)
DePaepe v. *Richardson*, 464 F. 2d 92, 99-100 (5th Cir. 1972)
Dousewicz v. *Harris*, 646 F. 2d 771, 774 (2nd Cir. 1981)
Eiden v. *Secretary of Health, Education & Welfare*,
616 F. 2d 63 (2nd Cir. 1980)
Fiorello v. *Heckler*, 725 F. 2d 175, 176 (2nd Cir. 1983)
Gold v. *Secretary of Health, Education & Welfare*,
463 F. 2d 38, 42 (1972)
McLaughlin v. *Secretary of Health, Education & Welfare*,
612 F. 2d 701, 704-705 (2nd Cir. 1980)
Parker v. *Harris*, 626 F.2d 231 (2nd Cir. 1980)
Smith v. *Weinberger*, 394 F. Supp. 1002, 1009 (D. M.D. 1975)
Stark v. *Weinberger*, 497 F. 2d 1092, 1097 (7th Cir. 1974)
Vega v. *Harris*, 636 F. 2d 900 (2nd Cir. 1981)

Interestingly, the first recused ALJ who initially summarily disqualified petitioner's wife and lay representative and dismissed his case at petitioner's first hearing, who was supposedly out of service insofar as this case goes, was able to affect the two subsequent determinations of this cause for the reason that he was the superior of the two subsequent ALJs (transcript of administrative proceedings pages 108, 109, 1587 and 1588). Moreover, the aforestated prior debarred ALJ violated Social Security Regulation 404.922a in that the taped record he recorded at a 1978 pre-hearing conference of this matter - he caused and/or allowed and permitted to be withheld from the Appeals Council and consequently the reviewing courts (see transcript of administrative proceedings page 1009). Ironically, the aforestated disqualified ALJ brazenly admitted at the 1978 pre-hearing conference that the long standing policy and procedure with regard to subpoena requests was not to grant such requests no matter what the reason (transcript of administrative proceedings

page 869). Thereafter, the instant ALJ, similarly boldly admitted at petitioner's second re-hearing that ". . . never had a doctor appear[ed] under subpoena . . .". All such aforestated actions were grossly in violation of petitioner's minimum due process hearing requirements rights to:

1. an impartial decision maker separated from those making the previous administrative determinations in his case
2. an effective opportunity to confront and cross-examine adverse witnesses
3. an effective opportunity for the petitioner to present his own arguments and evidence orally
4. an opportunity to retain counsel or have the informal assistance of a friend, desired by the petitioner

and in violation of Amendments V and IX of the United States Constitution (See Appendix V).

Thereafter, the instant ALJ contrived in his recommended decision torturous reasoning to justify his acceptance of the crucial adversary physicians' reports by stating his acceptance of their medical reports, over the strenuous objections of petitioner's, then, counsel by further stating he found such "physicians have prepared their reports in accordance with the standards expected of an examining physician . . ." and implicitly implied Dr. DePonte did not prepare his reports in accordance with the standards expected of an examining physician by further stating ". . . the evidentiary weight to be afforded Dr. DePonte's letters of January 11, 1979 and June 10, 1980, must be considered in light of the fact the latter report was specifically offered to claimant's counsel in preparation for the instant hearing".

Further, in recognition of 20 CFR 416.918, it was contrary to law for the lower courts to sanction the ALJ's reliance upon the crucial examining adversary physician's (Dr. Poverman's) opinion over petitioner's, then, counsel's strenuous objection especially when it was clear such physician was surreptiously provided with selective medical reports ex-parte, through the ALJ, indirectly, in further violation of 20 CFR §404.1546. The record evidence irrefutably discloses despite the instant ALJ's adamant denials that he, in truth

and in fact, caused and/or allowed and permitted multiple telephonic and written ex-parte communications to be transmitted to adversary physicians he, thereafter, ultimately relied on, in addition to Dr. Poverman, which physicians the petitioner's, then, counsel properly requested prior to hearing, to be in attendance at petitioner's second re-hearing. Thus, the ALJ's ex-parte actions were taken in wilful disregard for the petitioner's rights, the merits of his claim for disability benefits and notions of fair play and the administration of justice. The ALJ's nondisclosure of his ex-parte actions merely amplifies his personal interest and blatant constitutional assaults upon the petitioner's civil and human rights which constituted extreme undue hardship and harassment.

Moreover, the summary disqualification of petitioner's lay representative is in sharp conflict with the respondent agency's prior ruling on this very same issue (transcript of administrative proceedings page 248, also see Appendix E) with regard to Social Security Regulations §404.980 and §404.983 requiring notice of charges and hearing on charges - in addition to violations of Amendments V and IX of the United States Constitution (See Appendix V).

CONCLUSION

Over the years, this appeals process has continually been obstructed and thwarted by discrimination, bias, and repeated unjustifiable denials of disability insurance benefits and has escalated with counteractions and false claims, generated by the respondent's involved administrative officials, which have no bearing whatsoever on the ultimate issue of qualifying for disability benefits under the criteria of the Social Security Act and the major issue of the petitioner's qualification.

Thus, petitioner respectfully submits that resolution of this matter is of importance to the general public. There can be no credibility to administrative agency disability rulings when the facts presented and the available proofs which highlight unconscionable violations of petitioner's constitutional, statutory and regulatory rights demonstrate not only unbridled discretion by the respondent agency's involved administrative officials but also a serious and extreme lack of integrity. Accordingly, if our court system fails to

pursue action against a judge or judges or, for that matter, attorneys who represent the government who may be derelict in their obligation, responsibility and duty in scrutinizing disability cases (See Appendix Z), regardless of the might of the respondent agency's involved administrative officials, then the public can not have complete confidence and respect in its courts. Accordingly, it is not just the petitioner, who is at stake in this case, it is the citizens and people who make up the general public - who do, indeed, deserve complete confidence in this country as well as respect for this country's court system. Moreover, it is axiomatic and pathetic, in this case that Rule 11 of the Federal Rules of Civil Procedure has been completely disregarded by certain involved government counsel in an apparent conspiracy with the respondent agency and in gross violation of petitioner's due process rights.

The Second Circuit Court of Appeals ruling is simply untenable because it permits the rules of procedure to be stretched to promote, accommodate, condone and nurture administrative abuse, professional incompetence, ethical insensitivity coupled with government bar apathy while sanctioning malfeasance committed by the respondent agency's administrative officials. Moreover, such ruling is tantamount to judicial despotism and is further utterly repugnant to constitutional values.

The petitioner's proposition is that the irregularities appearing upon the face of this record constitute harmful error and ultimately prejudiced his claim to the extent the agency was prevented from issuing a valid order ie. recommended decision. Thus, all subsequent proceedings are vitiated and the agency's ruling is null and void -warranting reversal of the respondent agency's ruling and an award of benefits to petitioner.

Moreover, the fundamental principle of "significant", "special", "particular" and "considerable" weight traditionally accorded by the Second Circuit and other circuits to a claimant's/petitioner's treating physicians has been gutted, undermined and erroded. Surely, inaccurate/ erroneous findings regarding petitioner's true medical management should not form the underpinnings of judicial determination of the meritorious issues regarding petitioner's disability claim.

Undoubtedly, petitioner was outlandishly denied his full rights to appellate review while journeying through this appeals process. The utter failure of the Secretary to insure the actions of the Social Security Act were fair and thorough - even though petitioner was

represented by counsel - at the crucial administrative hearing before the third ALJ, the complete failure of the Connecticut District Court to accord any consideration to the merits of petitioner's claimed aforestated crucial irregularities/deficiencies and the Second Circuit Court of Appeals' sanctioning of the respondent agency's abuse of its process constituted grossly unjustifiable actions committed against petitioner and, ultimately, the general public and society - who are all, truly, at stake in this case. Accordingly, the preservation of the integrity and independence of this appeals process impels the Supreme Court's valuable time to safeguard and protect petitioner, society and the public at large by its imposition of an exercise of said Court's inherent power of supervision. The outright tyranny and undue harrassment must end and the unlawful activities underlying this appeals process, which has truly been the punishment endured by petitioner, must be stopped. Thus, petitioner most respectfully requests the Supreme Court of the United States grant a Writ of Certiorari to review and hear this matter, terminate such illegal, unconscionable and intolerable constitutional abuses existent in this appeals process and, thereafter, enforce recognition of petitioner's constitutional, statutory and regulatory rights with the respondent agency.

Respectfully submitted,

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